

**Testimony of
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**On Behalf of
The National Association of Manufacturers**

**Before The
Subcommittee on Commerce, Trade, and Consumer Protection**

House Committee on Energy and Commerce

**Hearing on
The Consumer Product
Safety Modernization Act of 2007
H.R. 4040**

**Tuesday
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Mr. Chairman and members of the Subcommittee:

Thank you for providing me the opportunity to testify on behalf of the National Association of Manufacturers ("NAM") regarding H. R. 4040, The Consumer Product Safety Modernization Act of 2007.

We support legislation that reauthorizes CPSC and provides it with the resources and staff necessary to carry out its vital mission. The Subcommittee is to be commended on its bipartisan efforts to develop a bill.

The NAM is the nation's largest industrial trade association, representing large and small manufacturers in every industrial sector and in all 50 states. I am President of the Association of Home Appliance Manufacturers ("AHAM") which represents the producers of major, portable, and floor care residential appliances and their suppliers. AHAM is a member of the NAM, where I have served as Chairman of the Council of Manufacturing Associations, a division of the NAM comprised of more than 200 trade associations. An additional part of our NAM membership is AHAM's participation in the NAM CPSC Coalition which represents most manufacturers of consumer products. The Coalition works closely with retail organizations.

All of the members of the NAM Coalition on CPSC are regulated by the Consumer Product Safety Act and the other federal safety laws administered by the Consumer Product Safety Commission. We work cooperatively with CPSC on policy issues. It is our most important regulatory relationship, and justifiably so, because consumer safety is the most

critical obligation we have to our customers. The NAM CPSC Coalition is committed to ensuring that the U.S. marketplace provides safe products to American consumers.

We have aggressively supported increased appropriations for the Commission in this Congress, and advocate that these increased dollars be directed to enhancing the CPSC's personnel dedicated to product testing, evaluation and enforcement and to improved technology and facilities. In fact, we may be the only industry group to lobby the appropriation committees for agency funding, none of which will be spent on or granted to our members.

Companies that work with the Commission recognize that it is facing many challenges, is thinly staffed, many veteran employees are retiring, and its information technology systems and laboratory are grossly inadequate. Modern technology makes it possible for a smaller Commission to be more productive than the larger Commission of the 1970s, but 21st Century technology and resources must be put in place.

We also recognize that there is concern about the safety of consumer products sold in the United States marketplace. Although we believe that the American marketplace is safer than ever, the perception of a safety problem is troubling to U.S. manufacturers because their economic viability depends on the confidence of the U.S. public in their products.

American consumers have benefited significantly from the efficiencies achieved by manufacturing many consumer products in China and other countries. But, there are supply chain challenges in China as well as challenges ensuring that foreign governments are performing their legitimate regulatory functions.

Well before the publicity about product recalls this last year, AHAM and other industry groups have worked closely with the CPSC and with the Chinese government and industry to enhance the safety processes in Chinese manufacturing.

We support stepped-up efforts to ensure that Chinese producers throughout the supply chain are meeting the appropriate standards of safety and quality. The Coalition supports expanding U.S.-Sino joint programs and applauds regulatory initiatives such as the recently announced agreements in several product sectors. We believe that these programs are critical to advancing safety and that ongoing funding for international outreach and education is critical to CPSC's mission.

In addition, the Coalition supports a number of general and product-specific legislative measures to increase CPSC's ability to carry out its mission. As I mentioned earlier, this includes increased funding. H. R. 4040 contain a number of provisions our coalition supports and we applaud you for seeking these improvements. However, we also believe H.R. 4040 contains a few provisions that need modification, as discussed below.

When we consider H.R. 4040 and imposing new obligations on industry, particularly imported products, we need to weigh whether we are actually achieving significant enhancements to product safety or whether we are imposing new non-tariff barriers. We

absolutely agree that imported products should be designed and manufactured just as safely as U.S. products.

We support the significantly increased authorizations for CPSC funding and that it be particularly focused on major improvements in the Commission's laboratory and on the staff's ability to evaluate the increasingly voluminous information reported to the Commission by manufacturers and retailers. We also believe that the number of full-time inspectors, including those at ports, should be significantly increased. We support structural reform so that the Commission may continue a temporary quorum with two Commissioners.

On lead in children's products, including toys and jewelry designed for children, the Toy Industry Association and, separately, the Fashion Jewelry Trade Association have strongly advocated national lead standards for these products. However, limits should be based in sound science. The focus of such limits should be practical. The major potential risk to children is from accessible components of children's products which may be ingested. This is why the CPSC limits lead in paint to 600ppm, jewelry to 600ppm and Illinois limits it in substrates to 600ppm. These levels are, in effect, safe harbor levels below which there is not likely to be leachable lead levels high enough to present substantial hazard. Your bill should direct the CPSC to recognize this distinction, and permit their experts to set appropriate limits relative to the characteristics and uses of the many different products they regulate. We note that the jewelry industry has advocated adopting specific, safety-based standards for lead in jewelry components both before the CPSC and this body. The toy and jewelry industries support the paint standard limit as proposed by the CPSC staff: 90ppm soluble lead, consistent with global standards for such products.

These industries want to continue to work with you on these issues.

The toy industry supports mandatory testing for certain children's products. On certification, they favor use of accredited labs with CPSC authority to recognize credentialing programs but not micromanage them for which it has neither the expertise nor the resources. The toy industry worked with the American National Standards Institute on a program which will reach places beyond U.S. jurisdiction to assure compliant product before it reaches our shores.

With slight modification, the toy and juvenile products industries support Section 103 requiring tracking labels for children's products. There should be recognition that it is not practical for certain small products to contain such information on each tiny component.

With respect to durable infant product registration, those industries understand the concept of encouraging consumers to register products. They would like to see more flexibility to allow companies to creatively register consumer information and use the information for direct contact related to their overall relationship with the customer while perhaps still restricting third party sales to maintain privacy.

The NAM Coalition supports the provision that would allow the CPSC the option not to utilize advance notice of proposed rulemakings if they are not deemed to be helpful. If rulemakings can be accelerated without losing the opportunity for meaningful public input, then the Commission should have that flexibility.

We support more rapid dissemination of information to the public. The reality is that the vast majority of delays in responses to Freedom of Information Act requests are due to lack of CPSC resources and technology. We understand the bill sponsors' intent that there may be circumstances where the Section 6(b) disclosures process should be foreshortened if rapid dissemination of data is required by public health and safety, but it should be made clear in the language that this for exceptional instances that meet specific criteria. We do not support any other diminution of the protections afforded highly confidential, proprietary information in Section 6(b).

In order to maintain the present environment of voluntary industry communications to CPSC, we strongly urge the Congress to keep in place the requirement that there be review of company submissions and CPSC documents for accuracy and fairness before disclosure occurs.

We agree to strengthening of the prohibition on stock piling provisions. We also believe that in most cases the Commission's power to disseminate information through its press releases to a wide variety of media has proven to be effective. But, we appreciate that in certain narrow circumstances it may be necessary to conduct further outreach, particularly in languages other than English. We appreciate, Mr. Chairman, your interest in this particular provision.

Certainly, manufacturers, importers, retailers and distributors should provide, upon request from the Commission, any information that they have on others in the supply chain to the extent that such information is known. It is proper and realistic for manufacturers, for example, to know who supplied them directly with products and components. And, manufacturers are responsible for ensuring that all products and components meet applicable safety standards. It is unrealistic in some cases, however, to expect firms to know every possible and changing subcontractor or fabricator who is several levels removed from the U.S. firm. We recommend that the legislation be revised accordingly.

Dangerous products should not be exported from the United States to foreign countries. Therefore, we support the concept of the export provision in Section 211. However, where foreign countries are protected by different standards, U.S. firms should not be banned from exporting a product that meets those foreign standards. For example, some U.S. mattress manufacturers make mattresses intended only for export. Those products meet the importing country but not CPSC standards. Congress should not erect its own non-tariff trade barrier for U.S. exporters by requiring explicit approval from an importing country before we are allowed to compete with others around the world. Congress should be encouraging, not discouraging, exports. So, we suggest that CPSC should not ban such exports if the manufacturer shows that the product meets applicable foreign standards. This will maintain the intent of your provision without imposing unnecessary restrictions on U.S. exports.

We support making more explicit a prohibition on sale of recalled products if the seller has actual knowledge that the product has been recalled. Asset forfeiture should be limited to the products involved and rules need to be developed to assure that this provision is not abused.

We also support your provision on sharing of information with federal, state, local and foreign government agencies and appreciate that, in order to protect American intellectual

property, you have provided that any such agreements may be abrogated if the foreign government agency fails to maintain the confidentiality of this information. This same provision should be extended to state and local governments.

The NAM Coalition supports a number of product-specific proposals which its industry associations and companies have brought forward. Much of this legislation relies on and enhances existing consensus standards and certification programs.

For example, the appliance industry supports federal action to ensure the proper installation of cooking ranges with UL, ANSI and building code mandated anti-tipping products and equivalent devices. Although very infrequent, range tipping accidents can be avoided with the proper installation of these safety devices. Many building codes already require this installation, but we know that there are installers and landlords who often fail to install these devices. In many cases, homeowners resist the installation of the devices. Therefore, my industry proposes that it be a violation of federal law for a person, at least a commercial installer or landlord, to install a range that is not compliant with the UL standard and building code provisions.

We believe that in general this bill places consumer safety first and properly resources the Commission. We look forward to working with you and the Committee on adopting this beneficial and reasonable CPSC reform in this Congress. I would be glad to answer any of your questions or follow up with any requested information.